IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.10574 OF 2004

Miya Ahmed Kasam Rokadia (since deceased)
Mrs.Khaleda Banu D/o. Miya Ahmed
Kasam Rokadia, the heir and legal
representative of Miya Ahmed Kasam
Rokadia : Petitioner
(Orig. Defendant)

V/s.

Mrs.Kalimun Farzana Abdul Rab : Respondent
(Orig. Plaintiff)

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Mr.R.A.Thorat for the petitioner.

Mr.A.N. Nasikwala for the respondent.

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CORAM : S.A. BOBDE, J.

June 10, 2005.

P.C.:

1. Rule.

Mr.Nasikwala waives service of rule on behalf of the respondent.

By consent, rule is made returnable forthwith and heard by consent.

2. The petitioner is the landlord of the suit premises. The respondent has filed a suit for a declaration that he is a tenant of open space admeasuring 250 sq. ft. abutting the suit premises being room no.A/14, ‘A’ block, Rokadia Compound, Yari Road, Versova, Andheri (West), Mumbai. He has also sought an injunction restraining the petitioner from disturbing his possession from the said open space or any part thereof. The petitioner resisted the suit on the question of jurisdiction before the trial Court. According to the petitioner, by virtue of section 7(9) of the Maharashtra Rent Control Act, 1999, hereinafter referred to as the "Act", the Court had no jurisdiction since the subject-matter of the lease was open space not appurtenant to the building.

3. Section 7(9) of the Act reads as under:-

> "(9) "premises" means any building or part of a building let or given on licence separately (other than a farm building) including,--
>
> (i) the gardens, grounds, garages and out-houses, if any, appurtenant to such building or part of a building,
>
> (ii) any fittings affixed to such building

or part of a building for the more beneficial enjoyment thereof,

but does not include a room or other accommodation in a hotel or lodging house."

4. The trial Court accepted the petitioner's plea and held that it had no jurisdiction to entertain the suit in view of section 7(9). The appellate Court has reversed the finding of the trial Court on the question of jurisdiction and remanded the matter back to the trial Court for deciding the question of injunction.

5. Mr.Thorat, learned counsel for the petitioner, submitted that the finding of the appellate Court on the question of jurisdiction is clearly wrong in view of the fact that the subject-matter of the land is an open space. He, therefore, submitted that the finding of the appellate Court that the subject-matter of the land comprises the suit premises and the open space is wrong.

6. Having heard the parties at length, I find no error of law apparent on the face of the order of the appellate Court. The petitioner appears to have first granted the premises in question under an agreement of tenancy dated 2.3.2001. This agreement itself contains a clause which

reads as follows:-

> "7) The Second Party has satisfied himself and agrees the height of the room premises is about 8 Ft. high at both ends and about 11 Ft. high in middle of the roof. The First Party has allowed willingly by obligation to the Second Party to utilise the empty open land attached with the room for gardening purpose only."

Thereafter, there appears to be another agreement dated 23.4.2001 which refers to clause 7 above and specifically states "in persuance thereof" the sum of Rs.30,000/- is agreed to be paid as deposit for open space of land.

7. Mr.Thorat, learned counsel for the petitioner, denies the genuineness of the agreement. The appellate Court has, prima facie, observed that there is nothing brought on record to show that the agreements are not genuine. This is a matter for trial and shall be decided at the time of final decision of the suit.

8. In the circumstances, the order of the appellate Court does not call for any interference. The petition is

dismissed. The rule stands discharged. No order as to costs.

Sd/-

S.A. BOBDE, J.